

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WILLIAM GREGORY SUMMERS,	§
	§ No. 607, 2008
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for Kent County
STATE OF DELAWARE,	§ Cr. ID No. 9704012286
	§
Plaintiff Below-	§
Appellee.	§

Submitted: January 28, 2009
Decided: February 25, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices

ORDER

This 25th day of February 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, William Gregory Summers, filed an appeal from the Superior Court's November 20, 2008 order denying his motion for sentence modification pursuant to Superior Court Criminal Rule 35. The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In January 1999, Summers was found guilty by a Superior Court jury of Robbery in the First Degree, Assault in the Third Degree, and Misdemeanor Theft. On the robbery conviction, he was sentenced as a habitual offender to a mandatory life term.² On direct appeal, this Court affirmed Summers' robbery and assault convictions, but reversed the theft conviction.³ Since that time, Summers has filed four postconviction motions pursuant to Rule 61 as well as a previous motion for sentence modification pursuant to Rule 35. This Court has affirmed the Superior Court's denials of all of those motions.

(3) In this appeal, Summers claims that a) the Superior Court improperly treated his Rule 35(a) motion for correction of sentence as a motion for modification of sentence under Rule 35(b); and b) the Superior Court improperly sentenced him as a habitual offender because he was not permitted to address the judge prior to the imposition of sentence.

(4) Rule 35(a) permits the Superior Court to correct an illegal sentence "at any time." Relief under Rule 35(a) is available when the

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, § 4214(b).

³ *Summers v. State*, Del. Supr., No. 563, 1999, Walsh, J. (Sept. 15, 2000).

sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.⁴ A sentence also is illegal when it is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁵ The narrow function of Rule 35(a) is to correct an illegal sentence, not to re-examine alleged errors occurring prior to the imposition of sentence.⁶

(5) The record reflects that Summers' life sentence was imposed following an evidentiary hearing at which the State carried its burden of demonstrating that Summers had been convicted of three predicate felonies, as required under § 4214(b).⁷ Moreover, this Court has upheld the constitutionality of the habitual offender statute.⁸ Because Summers' life sentence as a habitual offender is not illegal, he is not entitled to relief under Rule 35(a). We, therefore, conclude that Summers' first claim is without merit.

⁴ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁵ *Id.*

⁶ *Id.*

⁷ In fact, Summers conceded that point in his direct appeal. *Summers v. State*, Del. Supr., No. 563, 1999, Walsh, J. (Sept. 15, 2000).

⁸ *Williams v. State*, 539 A.2d 164, 180 (Del. 1988).

(6) Summers' second claim is that he was improperly sentenced as a habitual offender because he did not address the judge before sentence was imposed. That claim also is unavailing. Summers' life term was a mandatory sentence under § 4214(b). Once Summers was determined to be eligible for habitual offender status under that statute, the Superior Court had no discretion to sentence him to anything other than a life term. As such, any alleged inability to address the judge prior to sentencing was, at most, harmless error. We, therefore, conclude that Summers second claim also is without merit.

(7) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice